

MEETING TO DISCUSS THE GOVERNMENT ACCOUNTABILITY OFFICE WORK PLAN

MEETING BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION

TASK FORCE FOR THE CONTESTED ELECTION IN
THE 13TH CONGRESSIONAL DISTRICT OF FLORIDA

HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
FIRST SESSION

MEETING HELD IN WASHINGTON, DC, JUNE 14, 2007

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TASK FORCE FOR THE CONTESTED ELECTION IN THE
13TH CONGRESSIONAL DISTRICT OF FLORIDA

CHARLES A. GONZALEZ, Texas, *Chairman*
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MEETING TO DISCUSS THE GOVERNMENT ACCOUNTABILITY OFFICE WORK PLAN

THURSDAY, JUNE 14, 2007

HOUSE OF REPRESENTATIVES,
ELECTIONS TASK FORCE,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The task force met, pursuant to call, at 3 p.m., in Room 1310, Longworth House Office Building, Hon. Charles A. Gonzalez [chairman of the task force] presiding.

Present: Representatives Gonzalez, Lofgren and McCarthy.

Also present: Representative Lungren.

Staff Present: Liz Birnbaum, Staff Director; Charles Howell, Chief Counsel; Thomas Hicks, Election Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Janelle Hu, Election Counsel; Kristin McCowan, Chief Legislative Clerk; Daniel Favarulo, Staff Assistant; Gineen Beach, Minority Counsel; and Peter Sloan, Minority Professional Staff Member.

Mr. GONZALEZ. Welcome, one and all. I will call the Task Force meeting to order. Good afternoon. I am going to give some background into the purpose of the meeting today. I am going to ask the Members of the Task Force as well as Mr. Lungren if we can do this in the space of about 30 minutes. I think everybody's schedules would be well served.

On June 7, 2007 there was a meeting conducted with GAO, and I am going to go over the Members that were present; obviously, Members of the Task Force, Congresswoman Lofgren, Congressman McCarthy, as well the Ranking Member Mr. Ehlers, and, of course, Mr. Lungren. Also present at that meeting, and I want to make sure that I get everything in order here, were representatives of GAO as follows: Keith Rhodes, Nabajyoti Barkakati, Gloria Jarmon, Jan Montgomery, Jeffrey Hamilton and Richard Hung. Also present were Majority and Minority staff members.

At the meeting an engagement plan dated June 6, 2007, was presented and was discussed, the contents, of course, as well as a general timeframe, and at that point there was a discussion about a timeframe or at least somewhat of a target date. There was follow-up after that particular meeting asking for more specificity as it related to the timeframe or time line to accomplish what GAO had identified as what they thought would be required to answer certain questions that were posed by the Task Force and really describes the particular charge.

On June 13 GAO submitted a modified engagement plan that had specific timeframes or timelines. It is my understanding that,

of course, all this documentation has been made available and provided to the Minority side. Subsequent to receiving the last engagement plan that actually had more specificity as to the timeframe, there had been discussions regarding expediting that particular timeframe, which we will get into in a little greater detail in a minute.

The purpose today is, of course, to consider adopting the GAO's engagement plan and other related matters. So with that introduction—that is my opening statement—and in the interest of time, I will then be recognizing other members of the Task Force. I will recognize the Democratic member, the Majority member, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. I will not use 5 minutes. I first want to thank you for your leadership in chairing the task force. It is sort of a short-straw assignment, but I am glad that you are doing it. And hopefully we will get this analysis promptly, which I think is in everyone's interest, which you referenced.

In looking at the work plan, and I was just alerting the GAO staff, I don't want to try and change the plan because I think it is their plan, and we need to support it. All I want to do is to make sure that the questions that are in 1, 2 and 3 are in aid and necessary to question 4, which I think is the heart of the matter. So in looking at it, looking at 3-A, B and C, I mean, those are interesting issues. The question to them—not today, but in the future I think we are going to approve this plan—is do the answers to those questions help you answer number 4? If so, do them. But if they don't, I think we just want to cut to the chase and get this done.

I am not making a motion to change anything. I am just expressing a point of view that I want whatever it is you need to do, please do, but make sure that it is on point to getting the answers promptly as possible. I don't know if there is a better way to say it, but I think you are nodding, and that point has been made.

With that, I would just say that I concur in your idea that this meeting should take no more than 30 minutes, so I will stop talking and yield back the balance of my time, Mr. Chairman.

Mr. GONZALEZ. The Chair recognizes Mr. McCarthy.

Mr. McCARTHY. I thank the Chair. I appreciate you having a public meeting. I know we were able to meet privately with GAO last week. And I look forward to having a discussion about this, being able to move forward and get to the bottom. Thank you.

Mr. GONZALEZ. Mr. Lungren.

Mr. LUNGREN. Thank you for allowing me to say something, Mr. Chairman. The only thing I would raise is what I raised at the private meeting before, which is in the question of expediting it, one of the thoughts I had was making sure they do whatever they need to do with the Florida examination that has already taken place. It seems to me that is extremely important, and maybe that would help us get there as quickly as possible. And as I look at it, I don't know if it is phased in such that that is the first part of their inquiry. That is just my suggestion. That might be the best way for them to proceed.

Mr. GONZALEZ. Anything further, Mr. Lungren?

Mr. LUNGREN. No.

Mr. GONZALEZ. I think the most important thing—and I think I may have misstated the date of the second engagement plan; it would be June 12. And obviously it was discussed—it was delivered on June 12 and then discussed by some of the members and reviewed on the 13th, and here we are on the 14th.

It is important to point out that I think the emphasis, at least that I felt, and I know in my discussions with Congresswoman Lofgren, really would be question 4 or job objective 4. And that was considering the tests that were conducted on the voting systems from Sarasota County after the general election, are additional tests needed to determine whether the voting systems contributed to the undervote, because that is obviously the gist of the notice of contest which is before us today in the allegations made by the contestant.

It would appear that in order to make that determination, GAO will be making determinations as to what would be essential information to be able to arrive at something definitive to report to the Task Force. I don't have any real particular questions, only that, again, I am going to basically say what I think Ms. Lofgren was saying, to focus on the central question which comprises the core of the contested election and then determine what truly is absolutely essential.

We recognize—first of all, I want to assure you we recognize the limitation on resources. And the other thing we recognize is there may be some unforeseen circumstances that may delay your abilities. But I will assure you that you will have the full cooperation of the task force to make sure that any person or entity that has any information that you are requesting will be responsive. I am hoping that it will be in a cooperative nature.

One of the motions we will consider here this afternoon addresses the manner in which we are going to do that and how we are placing all of the parties and any entities on notice that we expect that kind of cooperation.

Ms. Lofgren, do you have any remarks?

Ms. LOFGREN. I don't know if at this point we want to do motions to proceed.

Mr. McCARTHY. I just have a quick question for clarification, if I could. You mentioned—I just want to make sure I am on the same page—this June 12 memo, and then you said something about a June 13 meeting. Did I miss a meeting?

Mr. GONZALEZ. No. I am saying we have had discussions with staff and others among ourselves.

Mr. McCARTHY. With GAO?

Mr. GONZALEZ. With GAO. Staff has had discussions with GAO.

Mr. McCARTHY. I know in our meeting prior we talked about making sure this was a unified front that we move forward in. The only thing I requested, I remember you and I both agreeing to this, if GAO is having meetings after our meeting that we had, that we have a representative from the Republicans and the Democrats. And I know you and I agreed to that. So that leaves me somewhat a little concerned if there was something. I just want to be kept apprised as we move forward. And if we are working, I want to make sure we are working off this June 12 one, because I have

some clarifying language that I would like to bring up kind of at the beginning, and you tell me when it is appropriate and proper.

Mr. GONZALEZ. First of all, there have not been any formal meetings of the members with GAO. There has been a discussion with staff of which members were privy because we had posed a question about looking at time lines. Everyone's best interest is served the sooner we get an answer. That is truly my belief, and that is the contestants' and the contestees' and the House of Representatives—the sooner we get our job done. That is not to say there shouldn't be a sufficient amount of time for GAO to be able to establish what is the essential information that is required to arrive at.

The only question that was posed was can we move the time line up. It wasn't actually into the content, modifications or anything, other than what can be done to meet a time line that would incorporate Congress' schedule and our recess in August. So that was the nature of it.

Mr. McCARTHY. Well, Mr. Chairman, just like when we discussed in our last one, we sat down and we had a lot of questions, GAO, with you in the room, and I was in the room, and the staff. And at the end of the meeting we asked did the staff have any questions; if a meeting takes place, which I appreciate this one being in public, that we have representatives from Republicans and Democrats there.

We have gone to the GAO from the perspective of not making this political, and that only leaves me great concern that after the meeting took place last week prior to this meeting, after we get this on the 12th, that there is some meeting going on that questions were asked where others couldn't be involved.

Ms. LOFGREN. At least so far as I am aware, I didn't go to any meeting. There was a phone call placed to see—as you will see on the June 12 memo, there is on the fourth page a high-level schedule, June 2007, July 2007, August and September. And the question was could we set—on a phone call, could we set a target that was more aggressive so that we could get information before the recess so that either we could decide this before the recess, or if the GAO felt additional work was needed to be done, and we don't know whether they will or not, that they could do that over the recess. That is the only—there wasn't a meeting.

Mr. McCARTHY. I know, Ms. Lofgren, you had to leave to a hearing that you had to run. We tried to set up a framework at the end when we came back from the vote. And the gentlemen's agreement was that if somebody was going there, and if GAO was communicating, that they would send one to each. It wasn't one central point. And I am just checking with my staff now. We don't have to be there, but if staff is going to be there—and I directed our staff if we are doing something with GAO, you invite the Democrats in there, because I think that is the most open. Just like when we brought both attorneys in.

I think in the long run the way we look at this with respect to this House, that is, I believe, the best manner in which to proceed, because right off the bat when you say the 12th, and we had a meeting on the 13th, and this changed, I am sitting here, well,

where were we? Staff could have easily been involved in that, and we can make this pretty unanimous.

Ms. LOFGREN. Reclaiming my time, as you know, I am chairing the Immigration Subcommittee, and we held 15 hearings in 2 months. But I will just give you my opinion that if we adopt this plan, and I hope that we do today, and I don't know why we shouldn't, that it is completely unworkable that every time an e-mail or a phone call is made, that you have to convene the bipartisan staff. It is just absurd. The Minority, when you were the Majority, would never have done that. We will never get this done if we have to tie ourselves in knots in that way. And I would think that would be a dumb way to do it. That is just my opinion. And certainly I know that Chairman Thomas would never have agreed to that.

The Chairman is not me, and it is not you, and we have to have some trust that day-to-day routine stuff and oversight of this is going to be done in a proper way.

Mr. GONZALEZ. The Chair recognizes himself.

We haven't had a meeting, we haven't had a briefing, we haven't had materials exchanged that the Minority has not been privy to. There was an inquiry about a date so that when we had this meeting we could have a discussion about our August recess and whether it would be possible to expedite a target date. And in a minute I think we will have some exchange here about moving the date that originally was discussed, even at our briefing of—I guess that was June 7. But I can assure you, and I think the way that we have conducted business has been open and transparent and has fully engaged you.

My problem, I think, with some of the things that Mr. McCarthy represents now would mean that if staff simply places a call to GAO to inquire about the status of some inquiry you may have had about a phone number, well, that means we have to coordinate that with Minority staff to be in on the phone call. What if GAO calls simply inquiring about some general information; I don't know, I will come up with something regarding an attorney's fax number, or is this junior partner the one they are supposed to contact or whatever? We would have to tell them to call back at a time certain. We would have to contact Minority staff to have someone there at that time. It just would not work.

So I think for some of what I call business as usual items, we are going to proceed, but I can guarantee you that anything of significance, a meeting, a briefing, reports that we may get, written inquiries that we may get, those will be made readily available to you. I don't believe that Minority staff has not had the full cooperation of Majority staff. I assume that, because I know we have been receiving reports of ongoing relationships regarding every aspect of this particular task force and its goal and the challenges.

Mr. MCCARTHY. Mr. Chairman, if I can just clarify. I am not asking for a phone call to GAO. I was requesting based upon what you said. If I misunderstood what you said, you said you got this June 12, and we had a meeting on the 13th. That is what struck my attention, based upon our conversations prior.

I come from this perspective of protecting the institution of this House. And, Mr. Chairman you will know in the manner in which

I have carried this out, I have never brought an amendment to this body that I haven't talked to you personally about. I make sure, regardless of whether the Democrats provide amendments to us, that I get them to you if I have them. And that is the manner I just wish to carry it out.

The only thing I was talking about is if we are conducting a meeting, that we do have both sides. No hidden agenda. And I think the greater transparency that we have, the greater ability at the end of the decision, whatever is decided upon, you have the support of the unanimous. That is my goal.

I understand the clarification of a question. I understand all that. It is just at the end of the meeting last week, we allowed staff, do you have any questions? Nobody had any questions. And maybe the terminology was used wrong when you said "a meeting." That is what would concern me. And I think you would think so, too. If you set up a meeting, you would be, hey, maybe our staff can't make it, but the invitation would be open. That is what I am saying.

Mr. GONZALEZ. I guess by way of clarification, and maybe it was just my mischaracterization, but I will tell you right now that Majority, members of the Majority, will have meetings with Majority staff, and we are not going to invite you.

Mr. McCARTHY. Only if you have good food I want to be invited.

Mr. GONZALEZ. And I suspect that you have meetings with Minority staff, and you will discuss motions, and you will discuss issues and such as you prepare for hearings. I do not expect that you are going to call us to participate. That is just the nature of that beast.

I don't want to get so far afield and start coming up with all sorts of scenarios. All I can tell you is I guarantee you, and I know that I speak for Congresswoman Lofgren and for staff, whatever we receive you are going to get, whatever inquiries are made you are going to be copied.

In a minute we are going into some of the specific processes and such, but I do want to move along, and we can even still have a further discussion as we consider some of the motions.

Mr. Lungren, did you have something?

Mr. LUNGREN. Before we get to the motion, just a concern I have, and that is we are putting a lot in the bailiwick of GAO. And they have come up with a work plan and given us an idea how much it is going to spend. We want to get this done as quickly as possible. I think we all do. Perhaps through the motions and the discussions and answers they give us we can make sure that what we require of them is not impossible for them to do, because I think it would be wrong—well, it would be very bad for us to put something on them and then us get an incomplete product from them that either leads us in the wrong direction, or then we fail to get any assistance on it.

The only thing I hope we would keep in mind as we make this motion, and some of us want to get this done as quickly as possible, we get a response from them as to whether it can be done in whatever time period we give them.

Ms. LOFGREN. Will the gentleman yield on that point?

Mr. LUNGREN. Sure.

Ms. LOFGREN. You look at the motion. There is the motion to improve engagement plan with a target date of July 27, 2007. And the target date is a word selected carefully because we want to get this done. On the other hand, we want them to do a good job.

Mr. LUNGREN. Absolutely.

Ms. LOFGREN. We are not going to tell them how to do this. I mean, I have some questions about it, but they have to decide, not me. I want to be very clear about that. But if they can't meet that, then they can't meet the date. But we want them to know they got to try to meet the date.

Mr. LUNGREN. And then I presume give us a time line at that point in time as to what they would need to do in the most expeditious fashion for our approval.

Ms. LOFGREN. That is why I am not going to put it in the motion, but I would expect that there would be some reporting in. I mean, we don't want to just say, I want to get a report, but I hope that our staffs will get some reports between now and July 27 on how they are doing.

Mr. LUNGREN. To be shared by both sides contemporaneously.

Ms. LOFGREN. Correct.

Mr. LUNGREN. Fine. Thank you very much, Mr. Chairman.

Mr. GONZALEZ. You bring up a good point, and all of us are going to be on the same page on this. GAO is not going to lend their name to any kind of report or findings unless they feel comfortable with it. If we did impede that, then, one, we probably are not going to get an opinion from you, or if we do get one, it is going to have so many caveats that they are almost worthless.

We can't afford that. And they were chosen because, one, of course, impartiality, but also the ability to conduct this. And you bring a great deal of credence to our proceeding, and I think that is first and foremost. But I can assure you that only because we are asking that they be very, very focused.

The other thing that I would just venture to guess is if I was GAO, and I was presenting this plan for us, I would be as expansive as possible. And in the process of the investigation, you may find out that you can jettison some things. And then also you may find out you need some additional information and such.

We also contemplate, and I believe GAO, and we can ask them in a minute, one of the representatives, will provide us status reports and such along the way. So I think we are pretty well covered on that.

Ms. Lofgren, do you have a motion at this time?

Ms. LOFGREN. I would be prepared to offer the motion to approve the engagement plan, the GAO engagement plan, with a target date of July 27, 2007.

[The information follows:]

June 12, 2007

Engagement Plan for Review of Voting Equipment Used in Florida's 13th Congressional District During the 2006 General Election

High-level objective: To what extent could the voting machines have contributed to the large undervote? Ascertain whether additional testing is needed to determine whether the voting systems contributed to the undervote.

Scope: Voting machines and equipment used in Sarasota County. Though Florida's 13th Congressional District includes voters from five counties (Charlotte, Desoto, Hardee, Manatee, and Sarasota), because the contestant's claims and the Florida state audit focus on Sarasota County, we will also limit our scope to Sarasota County.

Job Objectives: (1) What voting systems and equipment were used in Sarasota County and what processes governed their use? (2) What is the scope of the undervote in Sarasota County? (3) To what extent were tests conducted on the voting systems in Sarasota County prior to the general election and what were the results of those tests? (4) Considering the tests that were conducted on the voting systems from Sarasota County after the general election, are additional tests needed to determine whether the voting systems contributed to the undervote?

Approach:

- 1) What voting systems and equipment were used in Sarasota County and what processes governed their use?
 - a) Identify voting systems and equipment used in Sarasota County during the 2006 general election, including vote casting machines and vote tabulation machines. Identification should include versions numbers of all hardware and software in use.

Information sources: Sarasota County Supervisor of Elections.

- b) Verify that the voting systems were approved for use by the Florida Division of Elections and the Sarasota County Supervisor of Elections.

Information sources: Sarasota County Supervisor of Elections, Florida Division of Elections, Florida and county requirements for such approvals.

- c) What procedures were used to set-up and operate voting systems and equipment for the 2006 general election? Include systems and equipment used for election day, early, and absentee voting.

Information sources: Sarasota County Supervisor of Elections, Florida and county requirements for such procedures.

June 12, 2007

d) How are votes tallied and certified in Sarasota County, including recount procedures?

Information sources: Sarasota County Supervisor of Elections, Florida and county requirements for such procedures.

e) What different ballot styles were used in Sarasota County during the general election?

Information sources: Sarasota County Supervisor of Elections.

f) What problems were reported regarding the performance and use of the voting systems during the general election?

Information sources: Problem reports from Sarasota County Supervisor of Elections, submissions from contestant and contestee.

g) What is the current disposition of the voting systems and equipment that were used on election day, including hardware, software, and any removable media? How would GAO gain access to such machines and equipment?

Information sources: Sarasota County Supervisor of Elections.

2) What is the scope of the undervote in Sarasota County?

a) Analyze the distribution of undervotes in Sarasota County in the 2006 general election to identify any patterns, such as by ballot style, precincts, or geography.

Information sources: Machine-level results data from Sarasota County Supervisor of Elections.

b) Do the certified vote totals from Sarasota County for the 13th Congressional District race match those recorded by the machines?

Information sources: Vote image log files and certified vote totals from Sarasota County Supervisor of Elections.

c) How does the undervote in the 13th Congressional District race compare to other races in the 2006 general election and in previous elections that used these voting systems and equipment?

Information sources: Data on the history of usage of the voting systems and equipment from the Sarasota County Supervisor of Elections, election results from prior general elections.

June 12, 2007

3) To what extent were tests conducted on the voting systems in Sarasota County prior to the general election and what were the results of those tests?

a) Identify and review testing procedures conducted by the equipment manufacturers prior to the conduct of the election. How are problems identified by the manufacturers communicated to users?

Information sources: ES&S

b) Identify and review testing procedures conducted by the Florida Division of Elections prior to the conduct of the election.

Information sources: Florida Voting System Standards, Florida Division of Elections, test plans and reports

c) Identify and review testing procedures conducted by the Sarasota County Supervisor of Elections prior to the conduct of the election.

Information sources: Sarasota County Supervisor of Elections, test plans and reports

4) Considering the tests that were conducted on the voting systems from Sarasota County after the general election, are additional tests needed to determine whether the voting systems contributed to the undervote?

a) Assess the conduct of the parallel testing.

Information sources: Florida Division of Elections, Sarasota County Supervisor of Elections, audit team, state audit report, submissions from contestant and contestee.

b) Assess the conduct of the independent source code review conducted at Florida State University at the Security and Assurance in Information Technology (SAIT) lab.

Information sources: Unredacted software review and security analysis report, statement of work, Florida Division of Elections, SAIT team, submissions from contestant and contestee.

c) Assess the conduct of the examination of election procedures and practices.

Information sources: Florida Division of Elections, Sarasota County Supervisor of Elections, audit team, state audit report, submissions from contestant and contestee.

June 12, 2007

d) Are there any areas where additional testing could help determine whether the voting systems contributed to the undervote?

Information sources: Analysis of the testing conducted before and after the general election to identify any tests that were not conducted or were conducted in an ineffective manner.

e) For any additional tests, identify the test environment and test protocol to be used, as well as the resources needed to conduct such testing.

Information sources: Analysis of the testing conducted before and after the general election. Availability of specific voting systems in Sarasota County to meaningfully recreate conditions from the 2006 general election.

High-level Schedule:

June 2007 – Initiate contacts with the involved entities (Florida Division of Elections, Sarasota County Supervisor of Elections, SAIT team, ES&S, and others, as needed). Begin data collection and meetings. Review Task Force submissions.

July 2007 – Continue data collection and meetings. Begin data analysis of undervote data. Assess voting system tests conducted before and after the election.

August 2007 – Continue analysis and follow-up on any needed data collection. Identify any additional needed tests and identify necessary resources and environment.

September 2007 – Finalize findings. Prepare and deliver briefing on findings to Task Force.

Note that this schedule depends on the timely cooperation of all involved entities to provide GAO the relevant documentation or information. Should GAO not be able to gain the timely cooperation of an involved entity, we will report this to the Task Force.

Ms. LOFGREN. There are two other motions. I don't know whether there is objections. We can do them en bloc or en banc, or if there are objections to any of them, we can do them separately.

Mr. McCARTHY. I got a couple of motions as well. I don't know if you want to take it in order. The one I am talking about deals with the very first word of it.

Ms. LOFGREN. "I move the approval of?"

Mr. McCARTHY. No. It starts with the high-level objective of their plan.

Ms. LOFGREN. Oh, okay.

Mr. McCARTHY. If you read the first sentence, and I'm sorry, Mr. Chairman—

Ms. LOFGREN. I will put the motion on the table. You can offer—how procedurally do we want to do this, Mr. Chairman? Shall I suspend?

Mr. GONZALEZ. I think since you want to adopt the plan as written with a target date of the 27th, I believe that what Mr. McCarthy wants to do is actually change the first paragraph of the engagement plan. So I think we will go ahead and consider how he would want to change the high-level objective; is that correct?

Mr. McCARTHY. For everyone, at the very beginning it says, "High-level objective: To what extent could the voting machines have contributed to the large undervote?" I believe a greater clarification of what this—and it comes from our meeting that we had, because we kind of talked about that. I would make a motion to change that and say, "High-level objective: Did voting machine malfunction contribute to the large undervote?" because to me, that is really what we are asking you to do from this body. To me it is just a greater clarification here.

[The information follows:]

**Motion by Mr. McCarthy
Meeting of FL-13 Task Force with GAO
6/14/2007**

Clarifying Amendments to GAO Plan

High Level Objective: Did voting machine malfunction contribute to the large undervote? Ascertain whether additional testing is needed to determine whether voting system malfunction contributed to the undervote.

Ms. LOFGREN. Mr. Chairman.

Mr. GONZALEZ. Ms. Lofgren.

Ms. LOFGREN. I just received this, but I am not going to support the motion, and I am not going to support any changes to the scope of work, and I will tell you why. I have questions, I will be honest, as I mentioned in my opening remarks, about some of these statements. For example, what different ballot styles were used in Sarasota County? I don't know why that is pertinent, honestly. But if GAO thinks that they need to look at that in order to answer the questions to number 4, I am not going to taint their process.

We have asked them to come in as an independent agency with technical expertise to provide us information, and I think having voted to do that, we have to respect their independence and the scope of work that they have given to us.

Now, I think if you want to ask—if you want to refer your question to them for their consideration, fine, but I don't think it is proper to really, given the relationship we have established here with the GAO, to start changing the scope of work. We should ask them to review the issues we have raised. If, in their professional judgment—and we obviously have brains in our heads—that they concur that this would be a refinement that they would be comfortable with, then fine, they could make that change. But I don't think we should politicize this in any way, which is why I am not going to make any amendments, even though I have questions about some of the work.

And I would yield to the gentleman.

Mr. GONZALEZ. Mr. McCarthy.

Mr. McCARTHY. Ms. Lofgren, this does not change the scope at all. I would first like to ask GAO. And did I understand you correctly, you are not making any amendments?

Ms. LOFGREN. To the scope of work, even though I have questions, because I don't think it is proper.

Mr. McCARTHY. This is not to the scope of the work. If the GAO there has it, if I could get their opinion, because the way I looked at it, and we talked about this in the meeting prior, and I think you actually brought it back up, because that is what drove me to this, if you saw where it said, "did voting machines' malfunction contribute to the large undervote", to me that was the question that we asked you. Does that change the scope, in your opinion, in any shape or any form?

Mr. BARKAKATI. We considered when you vote to what extent voting machines contributed. I mean, even what they consider the normal operation of the voting machine might have been a malfunction. We were trying to be very neutral, and we did not want to say the voting machine malfunctioned. The way the voting machine was, did it somehow contribute to the undervote? I thought that would be a very good way to characterize it as opposed to trying to say—I mean, you are almost prejudging and saying the machine malfunctioned, and we did not want to do that. That is what our logic was in writing it.

I agree that we can phrase it in many different ways, and in the end what you are looking for is, I think, similar to what everyone else was thinking, you know, if it didn't work properly, kind of like that. But as you know, some product or something can be sold and

designed, and no one is saying it is malfunctioning, but maybe it is normal function with some bugs and problems in it. We were kind of thinking of it that way so we didn't have to put the word "malfunction" there. That is the how we considered it.

Mr. McCARTHY. If I can just go further just to clarify, would this change your scope if this was changed to this?

Mr. BARKAKATI. I don't think it probably will change the scope of what they are doing, but there may be a point, though, in terms of—I mean, in the end I think, you know, what is written in the first sentence and what you suggest probably gives the same result, so I don't know if it is worthwhile. But I think, as a quick judgment, it doesn't seem to change the scope, but I guess again we probably have to look at it a little more.

Mr. McCARTHY. If the GAO feels it is answering the same question I will be content to keep what they wrote then. I just wanted to clarify from our conversation prior when we were all in the room, I thought you came back. I just want to look from the aspect of really what this body was looking at, just clarifying.

Mr. GONZALEZ. Are you withdrawing?

Mr. McCARTHY. I will withdraw. The only thing I want on the record, I am just looking really to see did the machines record the votes accurately? And I thought this clarified that further, because I didn't want someone to come back at the end of the day and use the wording here to say we weren't answering the question this body wanted to answer.

Mr. BARKAKATI. No, I think exactly like you said. We will do basically that. The machines did contribute somehow to the undervote by not recording someone who cast a vote, things like that. And so in that sense I think we don't change anything.

Mr. McCARTHY. So at the end of the day, you are going to answer the question did the machines vote accurately?

Mr. BARKAKATI. Yes.

Mr. McCARTHY. I am fine with it then.

Mr. GONZALEZ. The motion is withdrawn, Mr. McCarthy.

And Ms. Lofgren.

Ms. LOFGREN. Does Mr. McCarthy have other amendments to offer to the scope?

I am prepared to move approval of the GAO engagement plan with a target date of July 27, 2007. And if necessary I would also move that the Chairman transmit the GAO engagement plan to the parties if they contest, and upon receipt the parties will have 7 days to submit comments to the Committee on House Administration, which will transmit such comments forthwith to the GAO. And I move that The Chairman notify individuals, offices and entities identified in the GAO engagement plan that the task force seeks their full, prompt and voluntary cooperation with the GAO. That would be my motion, Mr. Chairman.

Mr. GONZALEZ. All right. We have a motion.

[The information follows:]

Task Force Motion #4
Offered by Rep. Lofgren
June 14, 2007

Mr. Chairman, I move the approval of the GAO Engagement Plan with a target date of July 27, 2007; and

That the Chairman transmit the GAO Engagement Plan to the parties to the contest, and that upon receipt, the parties will have seven days to submit comments to the Committee on House Administration which will transmit such comments forthwith to the GAO; and

That the Chairman notify individuals, offices, and entities identified in the GAO Engagement Plan that the Task Force seeks their full, prompt and voluntary cooperation with the GAO.

Adopted by Voice Vote

Mr. McCARTHY. I just have clarification. Your motion was going back to the original one you said to approve this and add in, so you would be amending to July 27.

Ms. LOFGREN. A target date of July 27. For clarification purposes, the target date is—it is just that, it is a target. But if GAO is unable to meet that target, they are going to tell us that. They are going to take the time they need, but I want them to understand the sense of urgency that we have and that that would be a target for them.

Mr. McCARTHY. I guess that doesn't change the scope, because you wouldn't offer those amendments.

Let me ask GAO first. You came back to us in that meeting, and we expressed to you we want this as soon as possible, but we want it done right. Someone came back, we are going to shoot as soon as possible, you are looking maybe September, and now 1 week later someone picked the date of July 27. How does that work for you?

Mr. BARKAKATI. I think because we just started out and we estimated some dates, we still think it will take longer, but if the target date is July 27, obviously we can try harder to do as much as we can to critical items . . . and by that time we can be at a stage to report back what we have found so far. The only problem is that we cannot promise that it is going to be complete and done. But just as you had stated earlier, some of the places we may find out that things can go faster, and this happens all the time. Not that things really go faster, but I am just saying in this case, knowing the urgency, if things go faster, we can provide more perhaps.

So it doesn't affect how we are going to work, but if we are lucky with everything, and everything falls into place, everybody cooperates, and we get information, perhaps things will go fast enough that there is some kind of useful information by July 27. That is what I would be able to offer at this point, I think.

Mr. McCARTHY. As long as you make your best effort, I would be all right from that perspective. I think we expressed to you we want thorough and as quickly, but thorough was our most important.

Ms. LOFGREN. If the gentleman would yield. I don't think there is a disagreement here. We do not want GAO to compromise their efforts in any way. On the other hand, we have an August recess, and so we have got a target date, and I think we are all pretty clear with that here.

Mr. McCARTHY. Is that how you came up with the date, just picking from the recess part?

Ms. LOFGREN. Yes. If we can resolve this before we are all gone for a month, that would be great. I mean, that is a target. If we can't, then we will find out.

Mr. LUNGMREN. If the gentleman would yield.

Mr. GONZALEZ. In riding a horse you would call this spurring the horse.

Ms. LOFGREN. Perhaps. You are from that part of California. Of course, so is Mr. McCarthy.

Mr. McCARTHY. I just have one other question of GAO.

Mr. GONZALEZ. Go ahead.

Mr. McCARTHY. I know we were talking before, does the ballot design—you are going to be studying that as well, correct? Does that go into this review?

Mr. BARKAKATI. We are going to study the machines as they were loaded with those ballots that were used in that election, in the general election. So of course, in that sense, the machine includes the ballot design. And if we were to propose further testing, we can also consider it more if there is a need for usability testing, things like that. But obviously at this point we are not doing it. But I suspect those can be things we will consider in developing further tests that may or may not be needed.

What I am trying to say is the ballot, because it is part of the machine at this point as it is configured, it is included, the ballot design is part of the machine, but we have not—I mean, we talk about ballot designs and all because we want to consider all configurations of the machines and then to find out if there is any differences in the undervote pattern. That is like another variable in undervoting, maybe change of the ballot design. We just have to look at that.

Mr. McCARTHY. Have you changed the different phases in which you said you were going to do this from the meeting last week?

Mr. BARKAKATI. No. Actually what we did was we just consolidated the items to basically include the four subjects; we enhanced it to include the item, that we are going to also recommend or determine what further tests, if any, are needed. Earlier that was like left over as a little item in our written plan. And so we tried to streamline it to look in a very straightforward manner and take all the machines and things that were available and used, look at, you know, what kind of testing was done.

I guess the scope of the undervote, because that is the crux of the problem, you might say, well, it is already reported, why do you need to do it again? But our process calls for confirming the data that we are using. And so it is like a parallel activity quickly done by statisticians to confirm that it is true.

And then the last two, third and fourth items, basically we made them into tests that are done prior to the machines being used and a test that is done after the problems are reported. So, of course, the tests done prior might have some clues to it. Or if we were able to talk to the manufacturer, they may have found things that they could help us understand; you know, how do they report problems to Sarasota County. Did they report back any problems in the past and that sort of thing.

So we are trying to capitalize on all the knowledge that is out there to be able to decide what further testing might be needed. That is basically the logic behind it.

Mr. GONZALEZ. Mr. McCarthy.

Mr. McCARTHY. The only thing, I have a question to you, Mr. Chairman.

Mr. GONZALEZ. Sure.

Mr. McCARTHY. We talked about in that last meeting that we had that wasn't public, the staff getting together and creating a framework, making sure the flow of communication is fair. I know I gave you a motion earlier today or an amendment. I didn't get to hear back from you what you thought of that. But if there is

something that you have in your mind from that standpoint, I don't know that it has to be into this agreement, but I just think we should have some public agreement from that standpoint. I just think that gets greater transparency in how we move forward.

Mr. GONZALEZ. This first part of the motion is the engagement plan only with a target date of July 27. The other parts may touch on what you are discussing here, and that is the exchange of the information, one, with the contestant and contestee's representatives and how they communicate and how they provide information. And then, of course, I would think that internally staff should be able to coordinate anything, as far as anything that is being filed by anyone with the task force or the committee, obviously is shared immediately with the Minority. That is just a matter of course, I can guarantee you that.

Anything above that, I mean, there are certain things that decisions would be made that would be—like I said, if there is a phone call or an e-mail asking for some information on an election official, I don't want to have to convene a staff meeting just for someone on our staff to give them that information. I think to a certain extent you do have to trust, I guess, my integrity and my judgment. There is nothing of any significance that will be kept from you, I assure you of that. There is no advantage to be gained. We have a third party that is going to conduct this; we have the best third party conceivably out there for us. There is just no advantage to be gained. Parties are going to be providing information. There will be no reason not to be submitting and sharing it because we have to do that immediately. But eventually you would know about something. There is just no way we would want to keep anything.

Ms. Lofgren.

Ms. LOFGREN. I don't want to make it part of the motion because I think the staff needs to work this out with GAO, but as I said earlier, I expect—I don't want to do the briefings—but that our staffs will have reports, periodic reports. And I don't know what the appropriate—you know, whether it is weekly or every 10 days. They need to work that out. But that should be on a bipartisan basis. And I don't know whether that will end up being substantive or not, but certainly it should be bipartisan. And that is included in the discussion.

Mr. McCARTHY. I am just looking long term to make sure that we get to the end that we just have very transparent. And I know you and I talked about the only standpoint was it was in a private meeting. I would just like publicly so they know what you had said. And I agree, phone calls, all that, no. The staff can work that out. Coming to the framework, if they are getting updated, you are just going to both, that is all.

Mr. GONZALEZ. Well, this first part, the approval of the GAO engagement plan with a target date of July 27, 2007, I think we have completed the discussion. The second part was to transmit the engagement plan to the parties to the contest, and, upon receipt, that the parties would have 7 days to submit comments to the Committee on House Administration, and we will transmit those comments immediately to the GAO.

The only comment I have would be, of course, the parties are represented by attorneys, that they be very concise and to the point

as to their remarks and information they feel they need to provide to GAO within the framework of their engagement plan. The whole crux of the contestants' objection or contest here is electronic voting machine malfunction. So I am just telling the attorneys be very specific. I don't want GAO to have to go through a bunch of material that really is not going to assist them or may relate to some other side issue. It is all about the machines. At least that is my own impression of where we are today.

Ms. Lofgren.

Ms. LOFGREN. I would just concur in the Chairman's comments. And I actually at one point suggested that the appellate courts have limits on how many pages. I don't think we should do that. But if the parties submit extraneous stuff, GAO is just going to disregard it, and they are free to disregard it, and so it ought to be to the point. And it is not going to be welcome by anybody if there is a massive paper that is extraneous, and I would caution the counsel not to engage in that.

Mr. LUNGREN. That does bring up the question why lawyers' submissions to courts are called briefs. As I understand the Chairman, the manner in which the lawyers are to proceed is through the committee rather than directly through GAO, which is somewhat different than what we discussed before. I commend you for that. I think that makes a good deal of sense. But I wanted to make sure that that was what you were saying, that the lawyers, rather than having direct interchange individually or collectively with GAO, are supposed to go through the committee, and those communications will be directed then to GAO from the committee; is that correct?

Ms. LOFGREN. We will pass them on. I think it insulates GAO.

Mr. LUNGREN. I agree with you very much, and I thank you for that change in the thought process.

Mr. GONZALEZ. Mr. Lungren, you bring up a good point, because in our briefing with GAO there were some discussions and such. And, of course, as you reflect on it and how it works out and you play it out, then you start thinking in terms of GAO's contact with interested parties, to be very honest with you, it needs to be done because they have to have the input. We surely understand that, we respect it. But it doesn't have to be any more than that. And I think GAO would appreciate that we proceed in that, and I appreciate your support and your observations.

The next item that is part of Ms. Lofgren's motion is that I would notify individuals, offices, entities identified in the GAO engagement plan that the task force seeks the full, prompt and voluntary cooperation with the GAO. And the reason that I feel that we need to do that formally is to place the world on notice that we don't have that much time, we don't have all the resources in the world, don't give GAO a hard time, produce the information, it has been produced before for others, and there may be other requests.

GAO needs to advise us immediately if there is any reluctance on any party, because we have to move quickly. Congress has the authority to obtain information, and we will. And one thing that we have assured GAO from the beginning is to recognize the demands on resources and that you have our support regarding that; and secondly, the authority, because you don't have the authority to get much of this information, but you do through the power of this

committee and the authority of this committee, and that is what this particular part of Ms. Lofgren's motion addresses.

Mr. McCARTHY. I would like to second the motion, and I think this would be a unanimous vote.

Ms. LOFGREN. Good.

Mr. GONZALEZ. One last thing, and Mr. Lungren understands this, and so do the attorneys. There was some question regarding trade secrets and such which was a basis for the appeal in Florida. And we have been very specific from the beginning that we would have confidentiality agreements and such to protect any trade secrets, any proprietary interest that can be legally protected. We are going to honor all of that. GAO has their counsel, we have our counsel. Believe me, working together we can address it.

So any other comments on Ms. Lofgren's motion?

Ms. LOFGREN. On that point, if I may, Mr. Chairman, that is the case. But also, the Secretary of State for Ohio is here today just visiting, and I had a chance to meet her, not for any particular purpose, just with our freshmen. And she mentioned that by contract they have all the source code that is the dispute here in Ohio. It is the same source code. So knowing that actually makes me even less impressed if somebody doesn't want to fully cooperate since other States have the exact same information by contract and are sharing it with third parties pursuant to contract.

I just wanted to share that. We all want this to be resolved promptly. Delay serves no one's interest. And certainly we will respect the rights of everyone as we proceed. And I thank the Chairman again for his leadership and Mr. McCarthy for his excellent comments.

Mr. GONZALEZ. Any further comments on the motion?

Mr. LUNGREN. Mr. Chairman, if I could second the motion, I would.

Mr. GONZALEZ. I was almost going to recognize you for that. We will go ahead. At this time all in favor, aye.

Mr. McCARTHY. Are we doing en bloc all of them?

Mr. GONZALEZ. All three in one motion.

All in favor, aye.

All opposed?

Obviously it is unanimous.

Any further business for the task force?

Mr. McCARTHY. I wish the GAO the best of luck.

Mr. GONZALEZ. Thank you, everyone, and we stand adjourned.
[Whereupon, at 3:55 p.m., the task force was adjourned.]

